

BEFORE THE PHYSICAL THERAPY LICENSURE BOARD

STATE OF IDAHO

In the Matter of the License of:)	
)	Case No. PHT-2009-2
RAFAT SHIRINZADEH,)	
License No. PT-1376,)	STIPULATION AND
)	CONSENT ORDER
Respondent.)	
_____)	

WHEREAS, information has been received by the Idaho State Physical Therapy Licensure Board (the "Board") that constitutes sufficient grounds for the initiation of an administrative action against Rafat Shirinzadeh ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A. Alleged Facts and Law

A.1. The Board regulates the practice of physical therapy in the State of Idaho in accordance with title 54, chapter 22, Idaho Code.

A.2. The Board has issued License No. PT-1376 to Respondent. Respondent's license expired on July 6, 2006, and Respondent's license was canceled as of July 7, 2006. Respondent has not renewed his license; however, pursuant to Idaho Code § 67-2614, Respondent retains the right to renew his license for up to five (5) years after cancellation by paying the required fees.

A.3. On March 19, 2009, the Board was notified that on October 16, 2008, the Physical Therapy Board of California had revoked Respondent's physical therapist license in In the Matter of the Accusation Against Rafat Shirinzadeh, P.T., Physical Therapy Board of California Case No. ID 2007 65651. A copy of the Proposed Decision, Legal Conclusions and Order in Case No. ID 2007 6565 is attached as Exhibit A.

A.4. The October 16, 2008, Proposed Decision, Legal Conclusions and Order by the Physical Therapy Board of California was based upon an October 26, 2007, Findings of Fact, Conclusions of Law and Final Order entered against Respondent by the State of Washington Board of Physical Therapy in In the Matter of Rafat Shirinzadeh, Docket No. 06-10-A-1104PT. A copy of the Findings of Fact, Conclusions of Law and Final Order in Docket No. 06-04-A-1104PT is attached hereto as Exhibit B.

A.5. The fact that Respondent has been disciplined in other States is grounds upon which the Board may take disciplinary action against Respondent under the Idaho Physical Therapy Practice Act, specifically Idaho Code § 54-2219(9) (grounds for disciplinary action include “[h]aving had a license revoked or suspended, other disciplinary action taken or an application for licensure refused, revoked or suspended by the proper authorities of another state....”).

B. Waiver of Procedural Rights

I, Rafat Shirinzadeh, by affixing my signature hereto, acknowledge that:

B.1. I have read and understand the allegations pending before the Board, as stated in Section A. I admit that the Washington and California physical therapy boards have taken disciplinary action against me as reflected in the exhibits to this Stipulation, and that those boards’ disciplinary actions constitute grounds for separate disciplinary action against me by this Board as alleged in paragraph A.5. Nothing herein is to be construed as an admission to any findings of fact issued by the Washington or California physical therapy boards.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board’s orders; the right to judicial review of the Board’s orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of physical

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therapy in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license under Idaho Code § 54-2219(9) without further process.

C. Stipulated Discipline

C.1. License No. PT-1376 issued to Respondent Rafat Shirinzadeh, including any renewal rights, is hereby REVOKED.

C.2. In order for the Board to consider any request from Respondent for the reinstatement of his license, Respondent must:

a. Provide evidence that he has satisfied all conditions of reinstatement set out by the Physical Therapy Board of California and the State of Washington Board of Physical Therapy and is either reinstated as a licensed physical therapist in those states or is eligible for reinstatement.

b. Provide to the Board a copy of the evaluation ordered by the State of Washington Board of Physical Therapy in Docket No. 06-10-A-1104PT. If Respondent has chosen not to seek reinstatement in the State of Washington as a licensed physical therapist, Respondent shall submit to a psychiatric or psychological sexual-psycho evaluation performed by a Board-approved licensed psychiatrist or psychologist (the “evaluator”). Respondent shall provide a copy of this Stipulation and Consent Order to the evaluator, and the evaluator shall provide a copy of the evaluation report to the Board. The evaluation shall include the following assessment:

- i. Psychiatric or psychological diagnosis, if any.
- ii. Treatment recommendations, if any.
- iii. Capacity to participate in treatment, if treatment is indicated.
- iv. Future mental stability with regard to the ability to practice safely.

- v. Recommendations regarding Respondent's continuing practice of the physical therapy profession, if any.

If the evaluator finds that Respondent is in need of treatment in order to practice safely, Respondent shall undergo and complete treatment by a treatment provider approved in advance by the Board.

- c. Attend and participate in a meeting with the Board.

C.3. If the Board grants Respondent's request for reinstatement, the Board may place such conditions and restrictions on Respondent's license as the Board, in its discretion, may deem reasonable to protect the public.

C.4. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

C.5. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D. Presentation of Stipulation to Board

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2., which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

E. Violation of Stipulation and Consent Order

E.1. If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within twenty-one (21) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

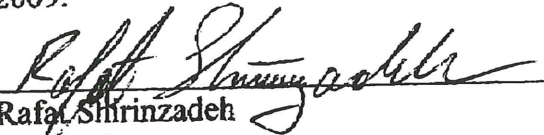
E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

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E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

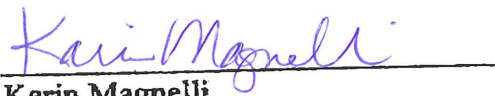
DATED this 13th day of July, 2009.


Rafat Shirinzadeh
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 13th day of July, 2009.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
Karin Magnelli
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-2220, the foregoing is adopted as the decision of the Idaho State Physical Therapy Licensure Board in this matter and shall be effective on the 17 day of July, 2009. **IT IS SO ORDERED.**

IDAHO STATE
PHYSICAL THERAPY LICENSURE BOARD

By Stephanie A. Liddle, PT, ATC
Stephanie A. Liddle, PT, ATC, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Rafat Shirinzadeh
4616 Wernett
Pasco, WA 99301

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Karin Magnelli
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Tana Cory
Tana Cory, Chief
Bureau of Occupational Licenses

BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:
RAFAT SHIRINZADEH, P.T.
Pasco, Washington 99301

Case No. ID 2007 65651
OAH No. 2008040380

Physical Therapist License No. PT 23416

Respondent.

PROPOSED DECISION

On September 22, 2008, in Sacramento, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Jessica Amgwerd, Deputy Attorney General, represented complainant.

Respondent Rafat Shirinzadeh was represented by Michael O'Donnell, Attorney at Law.¹

Evidence was received, the record was closed and the matter was submitted on September 22, 2008.

FACTUAL FINDINGS

1. On January 18, 2008, complainant, Steven K. Hartzell, made and filed the Accusation in his official capacity as the Executive Officer of the Physical Therapy Board of California (Board), Department of Consumer Affairs.

2. Respondent timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. *

¹ Respondent and his counsel appeared telephonically.

3. The Board issued Physical Therapist License Number PT 23416 to Rafat Shirinzadeh (respondent) on August 14, 1998. The license was current at all times relevant herein.

4. Respondent is a graduate of Loma Linda University School of physical therapy. He initially practiced physical therapy in California, but relocated to the state of Washington. He obtained a physical therapy license from the state of Washington in October 1998. He was a co-owner of Oasis Physical Therapy, a physical therapy practice, in Kennewick, Washington.

5. On April 13, 2007, the State of Washington Department of Health, Board of Physical Therapy (Washington Board) filed a Statement of Charges against respondent and sought to discipline his physical therapy license. A full evidentiary hearing was held from August 27 through August 30, 2007. Respondent appeared and was represented by counsel.

6. A certified copy of the record of the disciplinary action taken against respondent by the Washington Board, including findings of fact, conclusions of law and final order, was admitted in evidence.

7. On October 26, 2007, the Washington Board made Findings of Fact based upon clear and convincing evidence. The Washington Board's Findings of Fact are summarized as follows.

Patient B was referred to respondent for treatment of jaw pain. During the first appointment, respondent told Patient B that she had stress in the neck and back. He treated her four times in July and August of 2006. During the fourth appointment respondent advised Patient B that he would need to lower her sweatpants. He positioned patient on her back and lowered her pants below the pelvic area. He then laid his hand on her pubic bone and pressed on her stomach. The Washington Board found that "the treatment of Patient B in the pelvic area greatly exceeded the diagnosis of jaw pain and stress in the neck and back, and there was no therapeutic purpose for it. Respondent should have ceased treatment after addressing the problems listed in the referral. His action of lowering the patient's pants and treating the pelvic area was not warranted and was below the standard of care."

Patient C, a seven-year-old female was referred for complaints of a tight Achilles' tendon and foot pain. She was treated in July and August of 2006. During the examination of Patient C, respondent lifted her shirt and felt her spine. He advised her mother that she had scoliosis. Respondent asked Patient C's mother for permission to pull down her daughter's pants. Patient C's mother granted permission - if necessary. Respondent then pulled Patient C's pants down to the bottom of the buttocks, exposing the entire buttocks. Respondent then placed his thumbs inside of the gluteal cleft of Patient C. The Washington Board found that "respondent acted below the standard of care... a child of this age should not be disrobed, and the

Exhibit A
Page 1 of 4

respondent should not have been touching the gluteal cleft when treating an Achilles' tendon and foot."

Patient D was an employee of respondent. Respondent treated Patient D twice in April 2006 and twice in August 2006. After one session, respondent asked Patient D to rub his back. She complied. The Washington Board found that "A physical therapist should not allow or encourage a patient/employee to provide a back rub to the physical therapist. The Board finds such conduct to be inappropriate and a boundary violation." Additionally, the Washington Board found that respondent did not chart his treatments of Patient D and that such omission was below the standard of care.

Patient E was an employee of respondent. He treated her for back pain in March 2006. Respondent pulled the patient's pants down to the gluteal crease and performed an ultrasound on her buttocks. He did not drape the patient. The Washington Board found that respondent's actions of exposing the patient's buttocks and failing to drape the patient were a boundary violation and below the standard of care. The Washington Board also found that respondent called Patient E into a treating room to discuss an administrative matter while Patient E was serving in her capacity as an employee. Patient E observed that respondent was treating a female patient who was naked from the waist up, with no draping. The Washington Board found this conduct of failing to properly drape the patient was below the standard of care.

Patient F was a former employee of respondent. He treated Patient F on three occasions in 2004 for an injury to her rib cage. During each session, respondent would have Patient F remove her shirt and bra. Respondent would then ultrasound the patient's sternum and left breast. The Washington Board found that there was no clinical reason to ultrasound the breast and that an ultrasound of the sternum creates risks to the patient in the event the patient has a heart condition. Additionally, the Washington Board found that respondent did not chart this treatment of Patient F. The Washington Board found respondent's conduct was below the standard of care.

Patient G was a former employee of respondent. He treated her on one occasion in 2004 for pain and numbness in her shoulder and back. The patient removed her shirt and bra and wore a gown. During the treatment, respondent gradually worked the gown up under the patient's chin so that her breasts were exposed. Respondent rubbed lotion on the patient's chest and lifted a breast out of the way in order to complete the treatment. The Washington Board found there was no therapeutic purpose for respondent to touch Patient G's chest, as such treatment was not related to the injury. The Washington Board found that it was never appropriate for a physical therapist to lift a patient's breast and the standard of care calls for a therapist to request the patient to lift her own breast when it is necessary. The Washington Board also found that respondent did not chart his treatment of Patient G and at that omission was below the standard of care.

Patient H was an employee of respondent. In September 2006, respondent asked Patient H if she needed treatment. She stated that she did not. Respondent persisted and eventually Patient H agreed to a treatment session. Respondent asked the patient to wear a gown and she declined. During treatment, respondent had the patient lie on her stomach. He then pulled patient's tank top up past her breasts to her neckline and told her to roll onto her side. He then massaged her exposed breast. He instructed her to a roll onto her other side and then massaged the other breast. Respondent then instructed Patient H to roll onto her back and undo her pants. The patient initially refused but respondent persisted. Patient H reluctantly pulled her pants down to her gluteal fold. Respondent then worked on the patient's inner thighs. After patient H had dressed, respondent gave her a hug. Respondent did not chart this treatment of Patient H. The Board found respondent's conduct to be below the standard of care.

8. The Washington Board found by clear and convincing evidence that respondent had violated numerous laws and regulations governing the conduct and activities of licensed physical therapists in that state. The Washington Board found respondent had violated RCW 18.130.180 (1), (4), (7) and (24) (Unprofessional Conduct) and WAC 246-915-182 (1) (Unprofessional Conduct-Sexual Misconduct) and WAC 246-915-200 (Physical Therapy Records). The Washington Board suspended respondent's license to practice as a physical therapist in the State of Washington for a period of 36 months, commencing October 26, 2007, with no right to apply for early reinstatement. The Washington Board also ordered that within six months prior to reinstatement respondent shall be evaluated by a board approved psychologist or psychiatrist and that should he be reinstated he would be subject to conditions including a prohibition on solo practice and employment of a chaparrone with female patients.

9. Respondent testified at hearing that he had worked as a physical therapist in Washington for 10 years. He is currently living in Washington. He pointed out that 60 percent to 65 percent of his patients were female and that the only patients who complained about him were office staff, with the exception of a mother of an employee and the niece of an employee. He noted that none of the complaining witnesses were "off the street." He implied that the witnesses were lying and had an employment related score to settle with him. He testified that if he could rely the matter he could prove that the Washington Board made its decision based on prejudice. He testified "At no time during my professional practice have I ever done anything to harm the patient, nor done anything inappropriate or anything not taught."

10. Respondent testified that he has not worked since February 2008, although he has stayed current with his continuing education requirements. He is a stay-at-home dad for his three children. His wife works as a dental hygienist. He would have a difficult time paying the Board's costs, because their income is limited

Exhibit A
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to about \$4,300 a month.

The parties were advised that the Administrative Law Judge would take evidence relating to the factors set forth in *Zickerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. The parties were advised that these factors would be considered in determining the reasonableness of costs. These factors include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Complainant established that the reasonable and necessary costs of investigation and prosecution of this matter were \$2,686. Complainant established that the scope of the investigation was appropriate to the alleged misconduct and it was successful in bringing this action.

Although respondent established that his income was significantly reduced since his Washington license was suspended, his wife earns a moderate income and he is able to work outside the home in another field. Therefore, respondent did not establish that he did not have the financial ability to pay the costs incurred in the investigation and prosecution of this matter.

LEGAL CONCLUSIONS

1. Business and Professions Code² section 2660 provides in pertinent part that the Board may, after the conduct of appropriate proceedings under the Administrative Procedures Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any licensee, for unprofessional conduct including gross negligence, violation of any provisions of this chapter and commission of verbal abuse or sexual harassment. Section 726 provides in pertinent part that the commission of any act of sexual abuse, misconduct, or relations with the patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division.

2. Section 141 provides in pertinent part that for any licensee holding a license issued by a board under the jurisdiction of the Department, a disciplinary

action taken by another state for an act substantially related to the practice regulated by the California license may be grounds for disciplinary action by the respective California licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state shall be conclusive evidence of the events related therein.

3. As set forth in Factual Findings 1 through 8 and Legal Conclusions 1 and 2, respondent's license to practice physical therapy was disciplined by the Washington Board and he was suspended from the practice of physical therapy based upon findings of sexual misconduct, including moral turpitude and sexual acts with multiple patients or clients, and negligence or malpractice with respect to multiple patients or clients. Accordingly, pursuant to sections 141, subdivision (a), section 726, and section 2660, cause exists by clear and convincing evidence to discipline respondent's license.

4. Section 2661.5 provides in pertinent part that the Board may request the Administrative Law Judge to direct any licensee found guilty of unprofessional conduct to pay to the Board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case. As set forth in Factual Finding 11, the actual and reasonable costs of the investigation prosecution of the case were \$2,686.

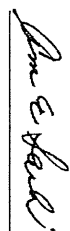
5. As set forth in Factual Findings 1 through 10, respondent denied culpability for his conduct, failed to demonstrate justification or mitigation of his conduct and failed to show rehabilitation. Given these facts and the fact that his misconduct was recent, repetitive and involved multiple patients, it would be against the public interest to permit respondent to retain his physical therapist license under any conditions.

ORDER

Physical Therapist License No. PT 23416 issued to Rafat Shirinzadeh is REVOKED.

Rafat Shirinzadeh shall reimburse the Physical Therapy Board the sum of \$2,686, within 30 days of the effective date of this Decision. The Board may in its discretion permit respondent to make installment payments.

Dated: October 16, 2008



² All statutory references are to the California Business and Professions Code unless otherwise indicated.

ANN ELIZABETH SARLI
Administrative Law Judge Office
of Administrative Hearings

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In the Matter of:

APPEARANCES:

Department of Health Physical Therapy Program, by
Office of the Attorney General, per
Oscar Chaves, Assistant Attorney General

PRESIDING OFFICER: Jerry D. Mitchell, Health Law Judge

ISSUES

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Docket No. 06-10-A-1104PT

During the August 27-30, 2007 hearing, the following witnesses testified: The

the following exhibits were admitted:

A. The following Department exhibits are admitted as numbered:

Exhibit D-15: Preservation Deposition of Patient G (provided at hearing);

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

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Exhibit B
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B. The following respondent exhibits are admitted as numbered:

- Exhibit R-1: Orthopedic Physical Therapy (Second Edition);
- Exhibit R-2: Orthopedic Physical Assessment (Second Edition);
- Exhibit R-3: Orthopedic Physical Assessment (Fourth Edition);
- Exhibit R-4: Clinical Assessment Procedures in Physical Therapy;
- Exhibit R-5: The Spin-Basic Evaluation and Mobilization Techniques;
- Exhibit R-6: Strain and Counter-Strain;
- Exhibit R-7: Manual Therapy "Naga," "Snags," and "MMMS" (Fourth Edition);
- Exhibit R-8: Manual Therapy "Naga," "Snags," and "MMMS" (Fifth Edition);
- Exhibit R-9: Mulligan Practitioner;
- Exhibit R-10: Myofascial Pain and Dysfunction;
- Exhibit R-11: Institute of Physical Art;
- Exhibit R-12: Introduction to Spinal Evaluation and Manipulation;
- Exhibit R-13: Myofascial Release Manual;
- Exhibit R-14: Matland Australian Physiotherapy Seminars;
- Exhibit R-15: Atlas of Human Anatomy;
- Exhibit R-16: Matland Australian Physical Therapy Seminars;
- Exhibit R-17: Strain and Counter-Strain I-Spine;
- Exhibit R-18: Physical Therapy;
- Exhibit R-19: TMV;

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER
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Docket No. 06-10-A-1104PT

Exhibit R-20: KP Southern California Ortho Physical Therapy
Residency;

- Exhibit R-21: Dr. Eric Haeger letter;
- Exhibit R-22: Denis Beaulieu letter;
- Exhibit R-23: Dr. Kevin Ayers letter;
- Exhibit R-24: Dr. Charles Krause letter;
- Exhibit R-25: Dr. Walter Hadley letter;
- Exhibit R-26: Dr. Julie Hadley letter;
- Exhibit R-28: Dr. Matthew Fewel letter;
- Exhibit R-29: Dr. Kalichman letter;
- Exhibit R-32: Traci Swett letter;
- Exhibit R-33: Dr. Cooper letter;
- Exhibit R-34: Dr. Kakumba letter;
- Exhibit R-35: Jan Urie letter;
- Exhibit R-36: Teddy Shupe letter;
- Exhibit R-37: Lucy Fort letter;
- Exhibit R-38: Donna Smith letter;
- Exhibit R-39: Richard Parker letter;
- Exhibit R-40: Gordon Piner letter;
- Exhibit R-41: Delores Smith letter;
- Exhibit R-42: Bob Smith letter;
- Exhibit R-43: Sherry Hill letter;
- Exhibit R-44: Beverly Calaway letter;

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER
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Exhibit B
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Exhibit R-45: Melissa Smeby letter;
 Exhibit R-46: Merrilee Hadley-Scofield e-mail;
 Exhibit R-47: Ronni Dreisbach letter;
 Exhibit R-48: Jeannie Webb letter;
 Exhibit R-49: Eula Vance letter;
 Exhibit R-50: Mary Jane Brown letter;
 Exhibit R-51: Sharon Straw letter;
 Exhibit R-52: Duane Straw letter;
 Exhibit R-53: Samuel Hansen letter;
 Exhibit R-54: Sharon Swanson letter;
 Exhibit R-55: Carol Peterson letter;
 Exhibit R-56: Sarah Swanson letter;
 Exhibit R-57: Grace Rudolph letter;
 Exhibit R-58: Emily Scofield e-mail;
 Exhibit R-59: Darla Shupe letter;
 Exhibit R-60: Jane Boyd letter;
 Exhibit R-61: Ardelle Engstrom letter;
 Exhibit R-62: Nancy Goodman letter;
 Exhibit R-63: Janice Duett-Stephan letter;
 Exhibit R-64: Mandy Page letter;
 Exhibit R-65: Donna McKenzie letter;
 Exhibit R-66: Bobby Jo Engeberg letter;

Exhibit R-67: Julie Williams letter
 Exhibit R-68: Neftali Lomeli letter;
 Exhibit R-69: Robin E letter;
 Exhibit R-70: Synnove Underwood letter;
 Exhibit R-71: Pamela Warren letter;
 Exhibit R-72: Gail Elliott letter;
 Exhibit R-73: Michelle Hamada letter;
 Exhibit R-80: Arianna McKenzie Oasis Physical Therapy Records;
 Exhibit R-81: Oasis Physical Therapy's patients' visits 2003-2006;
 Exhibit R-82: Dr. Larry Swisher letter;
 Exhibit R-83: Sharon Keefe letter; and
 Exhibit R-84: Marcia Vogel letter.

I. FINDINGS OF FACT

1.1 In October 1998, the state of Washington issued the Respondent a credential to practice as a physical therapist (PT). The Respondent's license was summarily suspended on April 12, 2007. At all times relevant herein, the Respondent was the co-owner of Oasis Physical Therapy, in Kennewick, Washington, providing services as a physical therapist.

PATIENT A

1.2 The allegations relating to Patient A were dismissed during the hearing by stipulation of the parties.

PATIENT B

1.3 Patient B is the mother of Patient H. Patient H was employed by the Respondent. Patient B was referred to the Respondent by Dr. Swisher for treatment for jaw pain. Patient B was treated by the Respondent four times in July and August of 2006. During the first session, while treating Patient B for jaw pain, the Respondent advised Patient B that she had stress in her neck and shoulders. Patient B was wearing a gown and a bra. The Respondent unhooked the bra in order to treat Patient B for stress. Patient B testified that the gown was falling forward and she was nervous and "afraid" that her breast was exposed. There is insufficient evidence to determine whether the breast was exposed. Patient B testified that during the fourth visit, while lying on her side, the Respondent kept his groin near Patient B's face. The Respondent denies this allegation. Marchand Montell, a female PT employed by the Respondent, was present in the room during treatment of Patient B, and corroborates the Respondent's testimony. There is insufficient evidence to sustain the allegation that the Respondent had his groin near the face of Patient B. During the fourth appointment, Patient B was fully clothed and wearing sweats from the waist down. The Respondent advised Patient B that he would need to lower her pants. The Respondent positioned Patient B on her back and lowered her pants below the pelvic area. He then laid his hand on her pubic bone and pressed on her stomach. The treatment of Patient B in the pelvic area greatly exceeded the diagnosis of jaw pain and stress in the neck and back, and there was no therapeutic purpose for it. The patient was referred by a doctor for treatment of the jaw pain. The Respondent should have ceased treatment after

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

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Docket No. 06-10-A-1104PT

addressing the problems listed in the referral. The Respondent's action of lowering the patient's pants and treating the pelvic area was not warranted, and is below the standard of care.

PATIENT C

1.4 In July and August of 2006, Patient C, a seven year old female, was treated by the Respondent for complaints of a tight Achilles tendon and foot pain. Patient C is the niece of Patient H. The mother of Patient C was present during the treatments. During the examination of Patient C, the Respondent lifted the shirt of the patient and felt the spine. The Respondent advised the mother of Patient C that Patient C had scoliosis. Patient C's physician had never made such a diagnosis. The Respondent then asked Patient C's mother (who had legal authority to consent to treatment) if he could pull down her daughter's pants. Patient C's mother granted such permission - if necessary. The Respondent then pulled Patient C's pants down to the bottom of the buttocks, exposing the entire butt. The Respondent then placed his thumbs inside of the gluteal cleft of Patient C. Patient C and her mother were both uncomfortable, and the mother was confused as to how this procedure related to a leg and foot problem. The Board finds that the Respondent acted below the standard of care. A child of this age should not be disrobed, and the Respondent should not have been touching the gluteal cleft when treating an Achilles tendon and foot.

PATIENT D

1.5 Patient D was treated by the Respondent for back pain twice in April 2006 and twice in August 2006. During this time, Patient D was an employee of the

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Respondent. During the first session, the Respondent asked permission to unhook Patient D's bra and permission was granted. When the session was completed, the Respondent assisted Patient D in re-hooking the bra. The Board finds these actions by the Respondent to be within the standard of care.

1.6 The Statement of Charges reads that during the second session, the Respondent unbuttoned Patient D's pants and pulled the pants off of one leg and without proper draping by the Respondent. Patient D testified that she removed her own pants without assistance from the Respondent. The Respondent was not facing the patient when she removed her pants. The Board finds that the evidence does not support this allegation.

1.7 Patient D expressed pain in her hip and inner thigh. In order to treat the area, the Respondent used two towels to cover Patient D. The Board finds that the Respondent had a therapeutic purpose (diagnostic) for rubbing the inner thigh and buttocks of the patient. The board concludes there is insufficient evidence to determine whether the Respondent brushed the patient's vaginal area, whether the towel fell off, or whether the Respondent failed to leave the room as Patient D dressed.

1.8 Patient D was treated by the Respondent for back pain during her fourth session with the Respondent. The Board finds there is insufficient evidence as to whether the Respondent rubbed the patient's breast, whether the Respondent had the patient sit up with breasts exposed, or whether he made comments about her "boobs."

1.9 The Respondent requested and allowed Patient D to rub his back after one session. A physical therapist should not allow or encourage a patient/employee to

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provide a back rub to the physical therapist. The Board finds such conduct to be inappropriate and a boundary violation.

1.10 The Respondent did not chart his treatment of Patient D. A physical therapist must always chart treatment of a patient. The Board finds the Respondent's omission to be below the standard of care.

PATIENT E

1.11 Patient E is an employee of the Respondent and was treated by the Respondent for back pain in March 2006. The Respondent pulled the patient's pants down to the gluteal crease and performed an ultrasound on the Patient's buttocks. The Respondent did not drape the Patient. The Board finds the Respondent's actions of exposing the patient's buttocks and failing to drape the patient, to be a boundary violation and below the standard of care.

1.12 The Respondent called Patient E into a treatment room to discuss an administrative matter while Patient E was serving in her capacity as an employee of the Respondent. Patient E entered the room and observed the Respondent treating a female patient who was naked from the waist up, with no draping. The Board finds this conduct of failing to properly drape a patient to be below the standard of care.

PATIENT F

1.13 Patient F is a former employee of the Respondent. The Respondent treated Patient F on three occasions in 2004 for an injury to her ribcage. During each session, the Respondent would have Patient F remove her shirt and bra. The Respondent would then ultrasound the patient's sternum and left breast. The Board

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finds that there is no clinical reason to ultrasound the breast, and that an ultrasound of the sternum creates risks to the patient in the event the patient has a heart condition. The Respondent also did not chart this treatment of Patient F. The Board finds the Respondent's conduct is below the standard of care.

PATIENT G

1.14 Patient G is a former employee of the Respondent. The Respondent treated Patient G on one occasion in 2004 for pain and numbness in her shoulder and back relating to an automobile accident. The patient removed her shirt and bra and wore a gown. During the treatment, the Respondent gradually worked the gown up under the patient's chin so that her breasts were exposed. The Respondent rubbed the patient's chin so that her breasts were exposed. The Respondent rubbed the patient's chest. The Respondent admits that he lifted a breast out of the way in order to complete the treatment. For the reasons stated above, the Board finds that the Respondent violated the standard of care when he exposed the Patient G's breasts without proper draping. The Board finds there was no therapeutic purpose for the Respondent to have touched Patient's G's chest, as such treatment was not related to the injury. Assuming arguendo that such contact was necessary, the Board finds that it is never appropriate for a physical therapist to lift a patient's breast. When necessary for treatment, the standard of care calls for the therapist to request the patient to lift her own breast. The Respondent also did not chart his treatment of Patient G. The Board finds the Respondent's conduct to be below the standard of care.

PATIENT H

1.15 Patient H is an employee of the Respondent. In September 2006, the Respondent asked Patient H if she needed treatment. She stated she did not. The Respondent persisted and eventually Patient H agreed to a treatment session. The Respondent asked the patient to wear a gown. Patient H declined stating that she preferred to be treated while wearing her tank top. The Respondent concurred. The Respondent worked on Patient H while she lay on her stomach. The Respondent pulled Patient H's tank top up past her breasts to her neckline. The Respondent did not pull the tank top back down or instruct the patient to do so. Rather, the Respondent then instructed Patient H to roll over on her side. Patient H's breasts were exposed. The Respondent massaged Patient H's exposed breast. The Respondent then instructed Patient H to roll on to her other side, and the Respondent massaged her other breast. The Respondent then had the patient roll onto her back and told her to undo her pants. The patient initially refused, but the Respondent persisted. Patient H reluctantly pulled her pants down to her gluteal fold. The Respondent then worked on Patient H's inner thighs. After Patient H had dressed, the Respondent gave her a hug. The Respondent did not chart his treatment of Patient H. The Board finds the Respondent's conduct to fall below the standard of care.

II. CONCLUSIONS OF LAW

2.1 The Board has jurisdiction over the Respondent and the subject matter herein. Chapter 18.130 RCW.

2.2 The Board has jurisdiction over the Respondent and the subject matter of this proceeding. RCW 18.97.120 and Chapter 18.130 RCW.

2.3 The Board used its experience, competency, and specialized knowledge to evaluate the evidence presented in this case. RCW 34.05.461(5).

2.4 The Washington Supreme Court held that the constitutional standard of proof in a professional disciplinary hearing is clear and convincing evidence.

Ongorn v. Dept. of Health, 159 Wn.2d 132 (2006), *cert. denied* 127 S. Ct. 2115 (April 2007).

2.5 The Uniform Disciplinary Act defines what conduct, acts, or conditions constitute unprofessional conduct. RCW 18.130.180. In this case, the Department alleged that the Respondent violated RCW 18.130.180(1), (4), (7), and (24) and WAC 246-915-182(1) and WAC 246-915-200.

2.6 RCW 18.130.180 defines unprofessional conduct to include:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not.

...

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed.

...

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any

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statute or rule defining or establishing standards of patient care or professional conduct or practice.

...

(24) Abuse of a client or patient or sexual contact with a client or patient;

...

WAC 246-915-182 Unprofessional conduct-sexual misconduct.

(1) The physical therapist shall never engage in sexual contact or sexual activity with current clients.

WAC 246-915-200 Physical therapy records. In order to maintain the integrity of physical therapy practice, the physical therapist is responsible for obtaining all necessary information, such as medical history, contraindications, or any special instructions from an authorized health care practitioner. The evaluation and treatment plan shall be written according to acceptable physical therapy practice consistent with the delegated health care task. Records must be maintained and include date of treatment, treatment record, and signature of person responsible for the treatment.

2.7 The Department proved with clear and convincing evidence that the Respondent's conduct described in Findings of Fact 1.3, 1.4, 1.11, 1.12, 1.13, 1.14, and 1.15

constitutes a violation of RCW 18.130.180(1), the commission of an act involving moral turpitude relating to the practice of the person's profession.

2.8 The Department proved with clear and convincing evidence that the

Respondent's conduct described in Findings of Fact 1.3, 1.4, 1.10, 1.11, 1.12, 1.13,

1.14, and 1.15 constitutes a violation of RCW 18.130.180(4), negligence or malpractice

which results in injury to a patient or creates an unreasonable risk that a patient may be harmed.

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2.9 The Department proved with clear and convincing that the Respondent's conduct described in Findings of Fact 1.3, 1.4, 1.11, 1.12, 1.13, 1.14, and 1.15 constitutes a violation of RCW 18.130.180(7) and (24) and WAC 246-915-182, abuse of a patient or sexual contact or sexual activity with a client or patient.

2.10 The Department proved with clear and convincing evidence that the Respondent's conduct of failing to chart patients' treatment described in Findings of Fact 1.10, 1.13, 1.14, and 1.15 constitutes a violation of RCW 18.130.180(7) and WAC 246-915-200.

2.11 In determining the appropriate sanctions, the protection of the public must first be considered. After public protection is addressed, rehabilitation of the license holder may be addressed in the sanctions. RCW 18.130.160. The following aggravating factors were considered: pattern of misconduct, willful misconduct, and multiple victims. The following mitigating circumstance was considered: the Respondent has no previous disciplinary history. The following sanctions and conditions are necessary to ensure public protection.

III. ORDER

3.1 The Respondent's license to practice as a physical therapist in the State of Washington is **SUSPENDED** for a period of thirty six (36) months from the date of this Order with no right to apply for early reinstatement.

3.2 Within six months prior to reinstatement, the Respondent shall be evaluated by a psychologist or psychiatrist from a Board approved evaluator. The

Respondent must obtain the Board's approval of the evaluator in writing prior to the evaluation. A copy of this Order shall be provided to the evaluator.

3.3 The evaluation of the Board approved evaluator must be submitted to the Board prior to reinstatement.

3.4 The Respondent shall comply with all recommendations of the evaluator, and shall submit personal progress reports directly to the Board, on forms provided by the Board, addressing his compliance with the evaluators recommendations

3.5 Reinstatement of the Respondent shall be subject to the following terms and conditions:

A. The Respondent shall notify the Board of current and future employment in the health care field by submitting a job description directly to the Board within ten (10) days of a reinstatement order or change in employment

B. The Respondent may not evaluate, treat, or meet with, female patients behind closed doors under any capacity unless accompanied by a chaperone, and shall chart the use of any and all chaperones.

C. The Respondent shall not engage in solo practice.

D. The Respondent shall submit to unannounced audits of documentation of chaperone use.

E. Any other terms and conditions deemed necessary by the Board at the time of reinstatement.

3.4 The Respondent shall provide a copy of this Order to any potential employer of the Respondent.

3.5 The Respondent shall assume all costs of complying with this Order.

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NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.46(3);

RCW 34.05.470. The petition must be filed within 10 days of service of this Order with:

Adjudicative Service Unit

PO Box 47879

Olympia, WA 98504-7879

and a copy must be sent to:

Board of Physical Therapy

PO Box 7867

Olympia, WA 98504-7867

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

The order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

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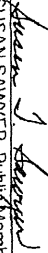
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3.6 The effective date of this Order is the date the Adjudicative Service Unit places the signed Order into the U.S. mail.

IV. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this Order. Failure to comply with the terms and conditions of this Order may result in suspension of the credential after a show cause hearing. If the Respondent fails to comply with the terms and conditions of this Order, the Board may hold a hearing to require the Respondent to show cause why the credential should not be suspended. Alternatively, the Board may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, the Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

Dated this 26 day of October, 2007.


SUSAN SAWYER, Public Member
Panel Chair

FOR INTERNAL USE ONLY: (Internal tracking numbers)
Program No. 2006-09-0002, 2006-10-0001, 2006-10-0003, 2006-10-0005, 2006-12-0001

CLERK'S SUMMARY

Charge	Action
RCW 18.130.180(1), (4), (7), and (24)	Violated
WAC 246-915-182(1)	Violated
WAC 246-915-200	Violated

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